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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2013-0078, Sequence 1]

**Federal Acquisition Regulation; Federal Acquisition Circular  
2005-65; Small Entity Compliance Guide**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

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**SUMMARY:** This document is issued under the joint authority of DOD, GSA, and NASA. This Small Entity Compliance Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005-65, which amends the Federal Acquisition Regulation (FAR). An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005-65, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

**DATES:** [Insert date of publication in the FEDERAL REGISTER.]

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005-65 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

**List of Rules in FAC 2005-65**

<u>Item</u>	<u>Subject</u>	<u>FAR Case</u>	<u>Analyst</u>
I	Prohibition on Contracting with Inverted Domestic Corporations	2012-013	Jackson
*II	Extension of Sunset Date for Protests of Task and Delivery Orders	2012-007	Lague
III	Free Trade Agreement-Colombia	2012-012	Davis
*IV	Unallowability of Costs Associated with Foreign Contractor Excise Tax	2011-011	Chambers
V	Technical Amendments		

**SUPPLEMENTARY INFORMATION:** Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005-65 amends the FAR as specified below:

**Item I—Prohibition on Contracting with Inverted Domestic Corporations (FAR Case 2012-013)**

This rule adopts as final an interim rule implementing section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), which prohibits the award of

contracts using Fiscal Year 2012 appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such an entity. The interim rule extended an existing prohibition that applied to the use of Fiscal Year 2008 through 2010 funds. Contracting officers are prohibited from awarding contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such entity, unless an exception applies. This rule will not have any significant economic impact on small businesses because this rule only applies to an offeror that is an inverted domestic corporation and wants to do business with the Government. Small business concerns are unlikely to have been incorporated in the United States and then reincorporated in a tax haven.

**Item II—Extension of Sunset Date for Protests of Task and Delivery Orders (FAR Case 2012-007)**

This final rule amends the FAR to implement section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383) and section 813 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81). These statutes extend the sunset date for protests against awards of task or delivery orders to September 30, 2016. There is no effect on Government automated systems.

**Item III—Free Trade Agreement-Colombia (FAR Case 2012-012)**

This final rule adopts, with minor change, the interim rule published in the Federal Register at 77 FR 27548 on May 10, 2012, to implement the United States–Colombia Trade Promotion Agreement. This Trade Promotion Agreement is a free trade agreement (FTA) that provides for mutually non-discriminatory treatment of eligible products and services from Colombia.

The Colombia FTA covers acquisition of supplies and services equal to or exceeding \$77,494. The threshold for the Colombia FTA is \$7,777,000 for construction. The excluded services for the Colombia FTA are the same as for the Bahrain FTA, Dominican Republic–Central American FTA, Chile FTA, NAFTA, Oman FTA, and Peru FTA.

**Item IV—Unallowability of Costs Associated with Foreign Contractor Excise Tax (FAR Case 2011-011)**

This final rule amends the FAR to implement certain requirements of section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, which imposes a 2 percent excise tax on certain Federal procurement payments to foreign persons. First, the statute disallows the cost of the 2 percent excise tax on certain foreign procurements as part of a payment, or as part of a cost-based negotiated price. Second, the statute stipulates that no funds are to be disbursed to any foreign contractor in order to reimburse the tax imposed. This rule will have a minimal economic

impact on small businesses because the 2 percent excise tax is applied only to foreign persons that receive Federal procurement payments pursuant to a contract with the Government of the United States for the provision of goods or services, if the goods are manufactured or produced in, or the services are performed in, a country that is not a party to an international procurement agreement with the United States.

**Item V-Technical Amendments**

Editorial changes are made at FAR 1.106, 2.000, and 31.205-6.

**Dated:** January 23, 2013

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